

Fresno, California

January 26, 2012

The City Council met in regular session at the hour of 8:30 a.m. in the Council Chamber, City Hall, on the day above written.

Present:	Oliver Baines III	Councilmember
	Andreas Borgeas	Councilmember
	Lee Brand	Councilmember
	Sal Quintero	Councilmember
	Larry Westerlund	Councilmember
	Blong Xiong	Acting Council President
	Clinton Olivier	Council President

Mark Scott, City Manager
Bruce Rudd, Assistant City Manager
Jim Sanchez, City Attorney
Yvonne Spence, City Clerk
Yolanda Salazar, Assistant City Clerk

Pastor Chip Henderson of the New Covenant Community Church gave the invocation, and President Olivier led the Pledge of Allegiance.

SWEARING-IN OF NEWLY-APPOINTED CITY CLERK YVONNE SPENCE

Oath of Office administered by out-going City Clerk Rebecca Klisch.

PROCLAMATION OF “WILLIAM S. BILL WHITEHURST DAY” – MAYOR AND CITY COUNCIL

PROCLAMATION OF “CATHERINE YIM DAY” - MAYOR AND CITY COUNCIL

The above proclamations were read and presented.

APPROVE COUNCIL MINUTES OF JANUARY 12, 2012:

On motion of Councilmember Westerlund, seconded by Councilmember Borgeas, duly carried, RESOLVED, the minutes of January 12, 2012, approved as submitted.

COUNCIL MEMBER REPORTS AND COMMENTS:

Acting President Xiong (1) thanked Heather for coordinating the press conference with Kaiser Permanente and Quigley and commended Kaiser for their partnership and stepping up and contributing to the Quigley area; and (2) spoke to the Crime Stoppers event he attended with Councilmember Borgeas and commended the Crime Stoppers organization for the work they do.

Councilmember Westerlund (1) stated he already talked with the PUD director about this and advised of complaint calls he has received about residential solid waste (trash not picked up/rudeness with calls to City Hall), and stated that did not bode well for the city organization and questioned if other members had received such calls; and (2) spoke to the tragic shooting recently involving the deaths of two young children and stated besides the victim’s families he wanted to make sure police officers on the scene receive the care they will need due to the trauma witnessed.

APPROVE AGENDA:

(10:00 A.M. – 1:30 P.M. ‘A’) AGENCY RESOLUTION – APPROVING THE REPLACEMENT HOUSING PLAN FOR FIVE (5) SITES WHICH INCLUDE 1733 AND 1737 E. BELMONT AVENUE, 161 N. CLARK STREET, 329 N. COLLEGE AVENUE, 864 KLETTE AVENUE, AND 3745 E. EL MONTE WAY, LOCATED WITHIN AND ADJACENT TO REDEVELOPMENT PROJECT AREAS

City Clerk Spence advised this item was originally scheduled for 10:00 a.m. and was continued to 1:30 p.m. as listed.

(1:30 p.m. ‘C’) AGENCY RESOLUTION – MODIFYING THE OWNER PARTICIPATION AGREEMENTS BETWEEN THE RDA AND FFDA PROPERTIES, LLC, WITHIN THE FULTON REDEVELOPMENT PROJECT AREA

Removed from the agenda.

SCHEDULED COMMUNICATION:

#2 APPEARANCE BY JOHN FEHR TO DISCUSS THE ALLEGED ILLEGAL TOWING OF HIS AUTOMOBILE FROM HIS RESIDENCE AT 1671 E BULLDOG LANE #107

Request to appear withdrawn.

On motion of Councilmember Westerlund, seconded by Councilmember Baines, duly carried, RESOLVED, the **AGENDA** hereby approved, as amended, by the following vote:

Ayes	:	Baines, Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes	:	None
Absent	:	None

ADOPT CONSENT CALENDAR:

Darin Preisendorf with West Valley Construction, 2793 S. Golden State Blvd., spoke in opposition to staff recommendation to reject all bids for **Item 1-F** and requested it be removed from the Consent Calendar for council discussion; stated West Valley was the low bidder all three ways on the project (Base Bid, Base Bid plus Alternate 1, and Base Bid plus Alternate 2); spoke to information he received from staff about the word “or” which left a loophole for the city to award to either the Base Bid plus Alternate 1 or Base Bid plus Alternate 2; and stated there would be increased costs if the project goes out for rebid, elaborating throughout.

Speaking in support of **Item 1-A** were: Ed Beckman, 7410 N. Recreation, CEO of California Tomato Farmers; Mike Dozier, Executive Director of the Office of Community and Economic Development at Fresno State; Layla Forstedt, 1550 E. Shaw, CEO for the Fresno/Clovis Convention and Visitors Bureau; and Al Smith, President/CEO of the Greater Fresno Area Chamber of Commerce.

Sandra Brock spoke to **Item 1-L (1)** requesting Council consider parallel legislation affecting personnel procedures to the extent that anyone who took an early retirement incentive (“golden handshake”) be required to pay the money back, and **(2)** stated serious consideration should be given to employees who took an early retirement incentive and later re-characterized their retirement as a service-connected disability in terms of their ability to come back and work again.

Darius Assemi representing Granville Homes spoke in support of **Item 1-A**.

Councilmember Brand pulled **Item 1-F** from the Consent Calendar for separate discussion/action.

**** (2 – 0)** Assistant Public Utilities Director Andersen spoke to **Item 1-E** stating language was inserted into the contract that CDM Smith, Inc., was formally known as Camp, Dresser & McKee, Inc.

Councilmember Borgeas pulled **Items 1-A** and **1-K**; Councilmember Westerlund pulled **Item 1-G**, and Councilmember Baines pulled **Item 1-L** from the Consent Calendar for separate discussion/action.

(1-B) APPROVE APPOINTMENT OF ROBERT ENGLEMAN TO THE BICYCLE AND PEDESTRIAN ADVISORY COMMITTEE; APPOINTMENTS OF FRANCES REYES ACOSTA AND DR. WILLIAM DAILEY, JR. TO THE DISABILITY ADVISORY COMMISSION; REAPPOINTMENT OF VONNIE FRANKS TO THE FRESNO-MADERA AREA AGENCY ON AGING; APPOINTMENT OF STEVEN BEDROSIAN TO THE FRESNO HOUSING AUTHORITY; AND APPOINTMENT OF JUSTIN SURRATT TO THE FRESNO REGIONAL WORKFORCE INVESTMENT BOARD – MAYOR SWEARENGIN

(1-C) **RESOLUTION NO. 2012-10** - AUTHORIZING SUBMISSION OF AN APPLICATION TO THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CalRecycle) FOR WASTE TIRE CLEANUP GRANT FUNDS, AND AUTHORIZING THE ASSISTANT DARM DIRECTOR TO SIGN NECESSARY DOCUMENTS ON BEHALF OF THE CITY

(1-D) REJECT ALL BIDS RECEIVED FOR THE PRIMARY SLUDGE PUMP REHABILITATION COMPONENTS BID AT THE FRESNO/CLOVIS WASTEWATER RECLAMATION FACILITY

**** (1-E)** APPROVE AGREEMENT WITH CDM SMITH, INC., FOR THE EXTENSION OF THE CONTRACT END-TIME FROM DECEMBER 31, 2011, TO DECEMBER 31, 2012, WITH NO ADDITIONAL COMPENSATION, FOR GROUNDWATER REMEDIAL ACTION SERVICES AT THE CITY OF FRESNO SANITARY LANDFILL

(1-H) AFFIRM ADOPTION OF A FINDING OF CONFORMITY WITH THE MASTER EIR/MND FOR PLAN AMENDMENT NO. A-09-02 PREPARED FOR E.A. NO. C-11-023/T-5993

#1 RESOLUTION NO. 2012-11 - ORDERING THE SUMMARY VACATION OF A PORTION OF SAN JOAQUIN STREET NORTHEASTERLY OF FULTON STREET AND A PORTION OF FULTON SREET SOUTHEASTERLY OF SAN JOAQUIN STREET

(1-I) APPROVE A PURCHASE AGREEMENT FOR A FEE SIMPLE ACQUISITION OF A PARCEL NECESSARY FOR THE CONSTRUCTION OF A NEW WATER SUPPLY WELL FROM PROPERTY OWNER FRANCES BARIGIAN IN THE AMOUNT OF \$93,000, AND AUTHORIZE THE PUBLIC WORKS DIRECTOR, OR DESIGNEE, TO SIGN ALL DOCUMENTS ON BEHALF OF THE CITY

(1-J) APPROVE AN AGREEMENT WITH BLAIR, CHURCH AND FLYNN IN THE AMOUNT OF \$66,700, WITH A \$15,000 CONTINGENCY, FOR PREPARATION OF CONSTRUCTION DESIGN AND GENERAL CONTRACT DOCUMENTS FOR THE SANTA FE AVENUE WIDENING PROJECT BETWEEN PALO ALTO AND BLYTHE AVENUES, AND AUTHORIZE THE PUBLIC WORKS DIRECTOR, OR DESIGNEE, TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

On motion of Councilmember Brand, seconded by Councilmember Westerlund, duly carried, RESOLVED, the above entitled **CONSENT CALENDAR** hereby adopted, by the following vote:

Ayes	:	Baines, Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes	:	None
Absent	:	None

CONTESTED CONSENT CALENDAR:

(1-A) APPROVE THE SECOND REVISION OF THE DOMESTIC AIR SERVICE INCENTIVE PROGRAM FOR THE FRESNO YOSEMITE INTERNATIONAL (FYI) AIRPORT TO ENCOURAGE AIR SERVICE TO NEW MARKETS

(*NOTE – SPEAKER COMMENTS WERE MADE EARLIER)

Upon the request of Councilmember Borgeas Aviation Director Widmar explained the program, incentive packages and competitiveness, and responded to Councilmember Borgeas' comments and questions relative to the high cost to fly from Fresno to San Francisco, long-haul flights, how this incentive program compared with other cities, and support for the program and importance of doing as much as possible to be competitive. Councilmember Westerlund thanked Mr. Widmar and his staff for the much improved airport, upon his questions Mr. Widmar stated his department budget could afford this program and funds were budgeted, and Councilmember Westerlund made a motion to approve staff's recommendation, which motion was seconded by Acting President Xiong.

Councilmembers Quintero and Brand commented briefly on the issue and expressed their support for the program, and City Manager Scott complimented Mr. Widmar for his work and expertise. President Olivier stated unless the fee waivers and incentive subsidy can be bifurcated he would have to vote 'no' as he did not agree with the subsidy and brief discussion ensued. Councilmember Westerlund noted a motion was pending to approve the entire incentive program and stated if that motion fails another could be made, and upon question of President Olivier Councilmember Westerlund stated he would not amend his motion.

On motion of Councilmember Westerlund, seconded by Acting President Xiong, duly carried, RESOLVED, the revised Domestic Air Service Incentive Program for the Fresno Yosemite International Airport (FYI) to encourage air service to new markets hereby approved, by the following vote:

Ayes	:	Baines, Borgeas, Brand, Quintero, Westerlund, Xiong
Noes	:	Olivier
Absent	:	None

(1-F) REJECT ALL BIDS RECEIVED FOR THE FRESNO STREET AND EL PASO AVENUE, INSTALLATION OF 14" WATER MAIN PROJECT

(*NOTE – SPEAKER COMMENTS MADE EARLIER)

Councilmember Brand stated unfortunately Council has to make decisions on re-bidding every now and then, acknowledged re-bidding was a long process that typically costs more money, and stated no matter how you look at this West Valley Construction had the low bid, he did not see why this could not be awarded to West Valley, and questioned what the challenge would be if the contract is awarded to the low bidder. City Attorney Sanchez responded and explained his office's concern with the bid process and the methodology used for determination of the lowest bidder, staff's attempt to use a combination method under the code, the specifications being inconsistent in their language, and staff's concern with a tainted bidding process and exposing the entire award to a challenge. Darin Preisendorf with West Valley Construction (who spoke earlier under *Adopt Consent Calendar*) spoke to and explained issues relating to the bids of Grizzly Construction and the top four bidders. Upon question Mr. Preisendorf and Mr. McDonald stated no bidders contested this, with Mr. McDonald adding (1) if Council were to direct staff to re-appear with an award that would be subject to a new staff determination and potential appeal by any of the other bidders, (2) from a purchasing perspective their challenge was the language that determines the basis of the low bidder left too much discretion and was inconsistent with the code as flagged by the city attorney's office, and (3) his office followed previous practice.

Discussion ensued among Councilmember Baines, Mr. Preisendorf, Assistant PW Director Banuelos, Mr. Sanchez, Councilmember Westerlund and Mr. McDonald on it being unclear why bids were being recommended for rejection, the scope of work being modified, if a lawsuit was possible if bids are rejected, where the bid went awry/if something new or different happened, why this matter did not go through administrative remedies, if the City always has the right to reject bids, and if the modified scope of work was a reason staff wanted to reject these bids. Councilmember Westerlund stated this project was needed, staff realized a change in materials was needed, and the City always reserves the right to reject bids, and made a motion to approve staff's recommendation, which motion was seconded by Acting President Xiong. Acting President Xiong stated he seconded the motion but not because the City had the right to reject stating just because it had that right did not mean they should do it; spoke to the process the city's business partners go through and their belief and expectation that the end result will be the result, to his being sympathetic to the argument, and to his concern with a legal challenge; and questioned what could be done in the future to be more transparent with the business partners, **(3 – 0)**, if staff received any other comments/if other questions were raised, and what the cost difference would be for staff time if bids are rejected and rebid, with Mr. Sanchez and Mr. McDonald responding. Mr. Preisendorf spoke further to issues relative to the signature box initialing and pipe material. Acting President Xiong stated he would have to rely on the city attorney's perspective and expanded further.

A motion of Councilmember Westerlund, seconded by Acting President Xiong, to reject all bids for the Fresno Street and El Paso Avenue 14" water main installation project failed, by the following vote:

Ayes	:	Westerlund, Xiong
Noes	:	Baines, Borgeas, Brand, Quintero, Olivier
Absent	:	None

Upon question of Councilmember Westerlund Mr. McDonald stated since bids were not rejected it was his understanding the intent was to award and advised staff would now post for award, allow the appeal period to expire, and public works would bring the item back to Council later for award. Brief discussion ensued on whether the contract could be awarded now and on the necessary posting process and timeline, with Mr. Sanchez and Mr. McDonald clarifying issues. Relative to a motion proposed by Councilmember Brand to direct staff to report back with a status on the process in two weeks Public Works Director Wiemiller stated staff would provide an update to Council in tray memo format.

Councilmember Westerlund stated discussion on “and/or” language was legitimate but recommended next time staff just request Council to reject bids and state their desire/need to do something different based upon their additional thought/review of the project so there are no arguments on legal issues. Councilmembers Quintero and Xiong presented questions/comments relative to whether there were any timing issues/weather concerns, possible legal challenges and if Council took a gamble here, and if Council would still have the option to reject bids later, with Mr. Wiemiller, Mr. Sanchez and Mr. McDonald responding. There was no further discussion.

(1-K) BILL NO. B-3 - BILL FOR INTRODUCTION AMENDING SECTIONS OF THE FRESNO MUNICIPAL CODE RELATING TO SERVICE CONNECTED DEATHS OCCURRING DURING ACTIVE PARTICIPATION IN THE DEFERRED RETIREMENT OPTION PROGRAM (“DROP”) FOR THE CITY’S FIRE & POLICE RETIREMENT SYSTEM AND EMPLOYEES RETIREMENT SYSTEM

Retirement Administrator McDivitt, City Attorney Sanchez and City Manager Scott responded to questions of Councilmember Borgeas relative to the subject amendment, the DROP program, definition of “employee”, if employees in the program were technically retired, employment status, if the amendments were of concern to the administration, public perception of a “double-dip” situation, and consequence if this is not approved.

On motion of President Olivier, seconded by Acting President Xiong, duly carried, RESOLVED, the above entitled Bill No. B-3 introduced before the City Council and laid over, by the following vote:

Ayes	:	Baines, Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes	:	None
Absent	:	None

(1-G) SUBMITTAL OF THE COMPREHENSIVE ANNUAL FINANCIAL REPORTS (“CAFRs”) SUBMITTED FOR INFORMATIONAL PURPOSES REGARDING THE FINANCIAL ACTIVITIES OF THE CITY OF FRESNO RETIREMENT SYSTEMS FOR THE FISCAL YEAR ENDING JUNE 30, 2011

Councilmember Westerlund stated given the city’s economic status he felt it was important to publicly highlight the status of the systems and upon his request Retirement Administrator McDivitt reviewed both CAFRs and responded to his questions relative to the surplus credit, if layoffs and early retirements affect the overall health of the systems, treatment of vested and non-vested employees, if the outside independent auditors found no discrepancies/deficiencies, and investment mix/merging market issues. A motion and second was made to receive and accept the CAFRs. Councilmember Borgeas left the meeting at 10:37 a.m. during discussion.

City Manager Scott spoke briefly to the solid condition of the systems, the community’s support of city employees, and his appreciation for the excellent management of this program by Mr. McDivitt and his staff and the retirement boards.

On motion of Councilmember Westerlund, seconded by Acting President Xiong, duly carried, RESOLVED, the informational Comprehensive Annual Financial Reports for the fiscal year ended June 30, 2011, received and accepted, by the following vote:

Ayes	:	Baines, Brand, Quintero, Westerlund, Xiong, Olivier
Noes	:	None
Absent	:	Borgeas

(1-L) BILL NO. B-4 - BILL FOR INTRODUCTION AMENDING SECTIONS OF THE FRESNO MUNICIPAL CODE RELATING TO RETIREE REINSTATEMENT TO CITY EMPLOYMENT
(*NOTE – SPEAKER COMMENTS MADE EARLIER)

Councilmember Baines stated there seemed to be logic in earlier speaker comments about the early retirement incentive/”golden handshake” and paying the money back if retired employees return to work, and upon his question Retirement Administrator McDivitt concurred there was logic in there but advised that was a city policy issue as incentives do not come out of the retirement system. Mr. McDivitt spoke to the intent behind the subject item and the city determining the fitness of an employee to do their job. City Manager Scott spoke briefly to employees who were laid off/chose to retire/were on the re-employment list/were called back to work and employees who retired with incentives.

On motion of Councilmember Baines, seconded by President Olivier, duly carried, RESOLVED, the above entitled Bill No. B-4 introduced before the City Council and laid over, by the following vote:

Ayes	:	Baines, Brand, Quintero, Westerlund, Xiong, Olivier
Noes	:	None
Absent	:	Borgeas

(9:00 a.m. ‘A’) APPROVE AN AMENDMENT TO THE CONSTRUCTION CONTRACT WITH FORTUNE-RATLIFF IN AN AMOUNT NOT TO EXCEED \$399,000, TO COMPLETE IMPROVEMENTS ON THE NEW HANDY RIDE FACILITY AT 4488 N. BLACKSTONE AVENUE

Transportation Director Hamm reviewed the issue and recommended approval, all as contained in the staff report as submitted. Councilmember Borgeas returned to the meeting at 10:51 a.m.

On motion of Councilmember Brand, seconded by Councilmember Baines, duly carried, RESOLVED, an amendment to the City’s contract with Fortune-Ratliff not to exceed \$399,000 to construct additional improvements to complete the Handy Ride Operations Facility hereby approved, by the following vote:

Ayes	:	Baines, Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes	:	None
Absent	:	None

(9:00 a.m. ‘B’) RESOLUTION - ADOPTING A POLICY TO WAIVE THE CITYWIDE DEVELOPMENT IMPACT FEES FOR PARKS, MAJOR STREETS, AND TRAFFIC SIGNALS WITHIN THE DOWNTOWN DEVELOPMENT INCENTIVE ZONE

Downtown Revitalization Manager Balch gave an in-depth review of the issue and recommended approval, all as contained in the staff report as submitted **(4 – 0)**.

Speaking in support of the issue were Kay Borders, President/CEO of PBID Partners of Downtown Fresno; and Christopher Koch, Global Alliance.

Councilmember Borgeas stated at first glance anything that promotes commerce and business in the city is good but like anything else the implications and how things play out need to be seen, and presented comments/questions at length relative to ‘putting all the eggs in the downtown basket’, if applying this citywide had been contemplated, if the city could afford to do this citywide, if this matter was time sensitive, desire to see the numbers/liabilities for citywide waivers, deferrals versus outright waivers, why deferrals do not look good, issues relative to a city policy allowing the city’s interest to be subordinated to a lender’s interest to achieve greater flexibility, desire to see if a deferral policy will yield what the city wants, and concern with the general wording and lack of information on how to pay for the potential \$750,000 loss, with City Manager Scott, City Engineer Mozier and City Attorney Sanchez responding throughout. Councilmember Borgeas clarified he was not saying this was not a great program adding reducing, if

not eliminating, certain fees was a good thing, stated the city needed to be reasonable in how the difference would be made up, and made a motion to direct staff to return in two weeks with information on a funding source for this proposal, cost for a citywide reduction in impact fees, the feasibility of a deferral where the city subordinates its interest and if that would encourage the same amount of opportunity downtown, and if something like this could be done on a pilot basis for one year, which motion was seconded by Councilmember Brand.

Councilmember Westerlund thanked staff for their work on this and elaborated on the issue at length including his strong support for downtown, history of the parks/police/fire/major streets/traffic signal impact fees and nexus studies, impact fees being a very complex issue and his reluctance to waive any fees at all, city infrastructure being underfunded for decades, developers getting away from building infrastructure in the past and the general fund picking up the difference, the need for a reliable source to backfill the fees and downtown being a reliable source, the great deal of progress that has been made downtown and need for that to continue, and his support to waive the major streets and traffic signal impact fees but not parks as the parks bond debt needed to be paid down. Councilmember Westerlund stated he would make a motion to waive only the major streets and traffic signal impact fees if the motion on the floor fails.

Councilmember Brand elaborated on issues including past bonds and debt service that is still being covered today, this fee waiver being structured heavily in favor of the park bonds, there being ways to find solutions and the key being an objective/critical economic analysis, importance of finding a way to backfill the fees if this were to be applied citywide, his ideas/theories for financing the rates and need to look at all avenues, **(5 – 0)** how the redevelopment agency was the primary means to finance all blighted areas, the cost needed to revitalize downtown, his desire to work with the city manager and city attorney to find ways to implement waivers or deferrals and find a viable/accurate way to backfill the cost at the same time, and need to revisit this in two weeks or 30 days to explore all options.

Councilmember Baines presented questions and comments relative to whether a fee deferral and subordination would be similar to a fee waiver, concern with the waiver of park fees/park maintenance, negative effects of sprawl, the lack of parity for southwest Fresno for decades until recently, this program's affect being lost if it is applied citywide, the strategic incentive for downtown making sense and support for this program, support for gathering more information, desire to explore other ways to make up/backfill the parks fees, support for some of Councilmember Brand's ideas, and support for waiving the fees only for downtown and not citywide.

LUNCH RECESS – 11:57 A.M. – 1:35 P.M.

Proceedings continued with lengthy Council discussion continuing. Acting President Xiong presented questions and comments relative to whether the estimated \$750K that could be waived was based on current rates, when fees were last updated, how city fees compare to other cities, support for downtown and investing in downtown but it being difficult as a district representative to balance that with district needs and what is best for the entire city as dollars become smaller, if the shortfall would be greater than \$750K if compared to current standards, this item being a small piece of a huge budget discussion, need to see the bigger picture before making such a huge commitment, need to have a long-term solution to address needs citywide before committing to a short-term solution for downtown, if the general fund would ultimately be the guarantee for the shortfall, if Council was the decision maker on priorities and where future dollars go, if there was an existing priority list for downtown/downtown districts, additional comments on citywide priorities/needs/funding, belief in this strategy but justification being the issue for him, and need to increase fees appropriately if a short-term strategy is to be implemented, with Mr. Mozier, Mr. Balch and Mr. Scott responding throughout.

Councilmember Quintero stated discussion turned to 'citywide' and it needed to return to the Downtown Development Incentive Zone (DDIZ), upon his question Mr. Mozier stated the DDIZ covered all of the downtown area, and Councilmember Quintero commented further on the issue and presented questions relative to development being one of the biggest economic generators and the lack of downtown housing fitting into the criteria of what needs to be done, the \$1 million funding and de-funding of Eaton Plaza park/park maintenance/number of landscape maintenance employees/issues being a matter of prioritizing, **(6 – 0)** support for reinvesting money into downtown to address needs, fee waivers meeting the needed incentive for job creation and to bring people downtown, and support for this program as presented and need to address citywide application at a later date.

Upon questions of Councilmember Baines Mr. Mozier stated the citywide revenues for park fees was \$1.6 million for the last fiscal year and that amount was the current normal but dramatically lower than four years ago. Councilmember Baines stated he was sensitive to comments/concerns/questions, suggested this be done on a one year trial basis with an automatic trigger at the end of that

year for an opportunity to extend another year, and expanded further on the need to capture the current momentum, with Councilmember Westerlund stating the housing starts that paid the impact fee in FY11 came to \$1.6 million and (with confirmation from ACM Rudd) stated the annual debt payment was \$2.2 million and he did not see how the city could go further in the hole, and added housing activity was needed and expanded further. Councilmember Baines stated if downtown gets the activity from the incentive going forward in the long-term there would be a revenue stream/mechanism to repay the lost fees and expanded further.

President Olivier submitted copies of photos of properties in neighborhoods two miles from downtown and outside of the DDIZ that are struggling with poverty, gangs, graffiti, boarded-up homes, etc., stated he believed in downtown but unfortunately there were big needs in other areas of the city, and stated he would support Councilmember Borgeas' motion to hopefully go citywide and alleviate some of the problems neighborhoods are struggling with.

Councilmember Brand requested clarification of the motion whereupon Councilmember Borgeas stated it was to direct staff to report back in two weeks with information on (1) how to make up the \$750,000 from waived fees, (2) amending the code to allow for the city's interest to be subordinated as a way to explore enhancing the deferral option rather than a waiver, and (3) if there was a way to assess the broader expansion of a waiver or deferral system to other parts of the city. Upon the request of Councilmember Brand Councilmember Borgeas amended his motion to direct staff to return in 30 days rather than two weeks.

On motion of Councilmember Borgeas, seconded by Councilmember Brand, duly carried, RESOLVED, staff directed to report back in 30 days with information on (1) how to make up the \$750,000 from waived fees, (2) amending the code to allow for the city's interest to be subordinated as a way to explore enhancing the deferral option rather than a waiver, and (3) ways to assess the broader expansion of a waiver or deferral system to other parts of the city, by the following vote:

Ayes : Baines, Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes : None
Absent : None

(9:30 A.M. #1) CITY COUNCIL CLOSED SESSION:

(‘A’) CONFERENCE WITH LEGAL COUNSEL/EXISTING LITIGATION – CASE NAMES:

#1 CITY OF FRESNO V. LUCILA JESUS MENDOZA

#2 CITY OF FRESNO V. RAPS FRESNO, LLC, ET AL (aka “HOTEL FRESNO”)

~and~

(9:30 A.M. #2) JOINT CLOSED SESSION WITH THE REDEVELOPMENT AGENCY:

(‘A’) CONFERENCE WITH LABOR NEGOTIATOR – EMPLOYEE ORGANIZATIONS:

#1 FRESNO CITY EMPLOYEES ASSOCIATION (FCEA)

#2 CITY OF FRESNO PROFESSIONAL EMPLOYEES ASSOCIATION (CFPEA)

The City Council met in regular closed session and joint closed session with the RDA in Room 2125 at the hour of 2:25 p.m. to consider the above matters and reconvened in regular open session at 3:57 p.m. There were no announcements.

(9:30 A.M. #3) COUNCIL CONSIDERATION OF REQUEST FROM THE DEVELOPER OF THE HOTEL FRESNO PROJECT TO RELEASE CITY JUDGMENT UPON PROJECT COMMENCEMENT – COUNCILMEMBER BRAND

Councilmember Brand stated based on discussion in closed session he was continuing this item three weeks.

On motion of Councilmember Brand, seconded by Acting President Xiong, duly carried, RESOLVED, Item 9:30 a.m. #3 continued three weeks, by the following vote:

Ayes : Baines, Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes : None
Absent : None

(10:00 A.M.) BILL NO. B-5 - ORDINANCE NO. 2012-3 - BILL FOR INTRODUCTION AND ADOPTION EXTENDING ORDINANCE NO. 2011-41 RELATING TO PLACEMENT OF A MORATORIUM ON OUTDOOR CULTIVATION OF MEDICAL MARIJUANA IN THE CITY OF FRESNO PURSUANT TO THE GOVERNMENT CODE PENDING THE DEVELOPMENT OF STANDARDS AND REGULATIONS RELATING TO CULTIVATION AND DISPENSING AS A NEW LAND USE STANDARD, AND ADOPTING FINDINGS OF CATEGORICAL EXEMPTION PURSUANT TO CEQA

Chief Dyer reviewed the issue and recommended approval, all as contained in the staff report as submitted, and upon the request of Councilmember Westerlund spoke to the U.S. Attorney's new opinion.

Roselyn Clark referenced a letter she sent to Council and spoke in support of the ordinance.

Chief Dyer and City Attorney Sanchez responded to questions and comments of Councilmember Westerlund relative to reason for this extension, the emergency still existing and it being known that outdoor cultivation has a direct correlation to crime, issues going before the California Supreme Court and concern with what the Justices may or may not do, if Fresno as the fifth largest city in the state should consider joining in or adding an amicus brief of its own, and the poorly-worded Compassionate Use Act leaving big holes for courts to drive through.

Councilmembers Borgeas and Brand presented questions and comments relative to Fresno County's legislation, concern with what will happen after this emergency legislation ends, timeline to bring the permanent land use ordinance to Council, request the city attorney make sure the final ordinance is consistent with Fresno County's ordinance, number of plants allowed per person, if there are no State standards, if there was a way to allow six plants per person for those with real medical needs who would benefit, if indoor marijuana grows were safer, and if allowing indoor grows was in compliance with State law, with Chief Dyer and Mr. Sanchez responding. Councilmember Westerlund spoke to indoor/outdoor cultivation and stated part of the problem with banning outdoors was it forced it indoors where there may be children, stated the most conservative ordinance to his knowledge was in Anderson, California, which has strict and expensive requirements and explained, and stated he hoped staff would bring an ordinance like that back to Council, with Chief Dyer stating he would look into it.

President Olivier agreed it was regrettable the way the marijuana issue has turned out in the state and nation and that outdoor cultivation was an attractive nuisance, stated it breaks his heart to see grows openly in neighborhoods and he wanted to give the police department all the tools needed to clean up neighborhoods, stated he opposed this ordinance 30 days ago because he was uncomfortable with the nature of it being an emergency urgency measure and at that time spoke in support of waiting until something firmer came forward, and stated he would again vote 'no' but clarified that in no way reflected on Chief Dyer or his department, Neighborhood Watch, or people who live in crime infested neighborhoods and are demanding service.

On motion of Councilmember Westerlund, seconded by Acting President Xiong, duly carried, RESOLVED, the above entitled Bill No. B-5 extending Ordinance No. 2011-41 pursuant to California Government Code Section 65858, for a period of 10 months and 15 days, unless terminated earlier, hereby adopted as Ordinance No. 2012-3, by the following vote:

Ayes	:	Baines, Borgeas, Brand, Quintero, Westerlund, Xiong
Noes	:	Olivier
Absent	:	None

(11:00 A.M.) WORKSHOP ON THE SUSTAINABLE FRESNO DIVISION OF THE DARM DEPARTMENT

Sustainability Manager Oldham submitted the written presentation to Council and gave an in-depth PowerPoint presentation entitled "Sustainable Fresno Division Overview" which consisted of Sustainable Fresno (Built on Fresno Green/Established May 2009/Funding), Initial Sustainable Fresno Programs, Core: Program Partners, Energy Challenges with Electricity, Economic Impact, Energy Connection/Key Components, **(7 – 0)** Started with Single-Family Homes, What's Missing with Homeowners to Invest in Energy Efficiency?, Energy Opportunity Map, Maps Showing Surveys Completed by January 4, 2012, Energy Savings Opportunity Drives Demand for Surveys, Sustainable Fresno Free Residential Energy Surveys ('Home Tune Up Program'), Photos/Examples of Homes Surveyed and Problems Found, Direct Economic Benefits, Program Leverage, Contractor Training and Coordination, Renewable Energy Projects, Commercial PACE Financing, Commercial and City-Owned Building Projects, Energy Connection Completed, and Planned Next Steps.

Speaking in support of the Sustainable Fresno Division and their work and programs were: Jeannette Ishii, Senior Government Relations Representative for PG&E, who also spoke to their partnership with the city; Mike Hodgson, President of Consol, an energy consulting firm from Stockton, CA; and Ross Stout, Chief Operating Officer of Fig Tree Energy Resource Company of San Diego, CA, administrators for Fresno's PACE Program.

Councilmember Borgeas presented numerous questions relative to funding/original seed money, percentage of dollars used for the general plan update, if programs are required by the federal government, funding source when dollars run out, if the surveyors are subcontracted, number of Sustainable Division team members and city staff, if federal grants pay for staff, PG&E's role, form-based code, grant funds for people who want to install solar, program leverage, local business activity, annual cost savings, the PACE program, and Building Performance Institute (BPI) certification, with Mr. Oldham responding throughout.

Councilmember Baines stated this was a great presentation and he was a fan of the Sustainable Fresno Division, commended Mr. Oldham for his great work and stated this division was something the city could be proud of **(8 – 0)**, and also thanked the city's partners. City Manager Scott added Mr. Oldham was the anti-bureaucrat, the ideal of someone who wants to find a way to get things done and does, and everyone appreciated that about him, with Mr. Oldham commending his team for their work and the programs that have been put in place. Councilmember Xiong also commended Mr. Oldham and his staff/team for their work, the way they operate, and their outreach, and presented questions and comments relative to areas where surveys were conducted, the number of surveys conducted in north Fresno and reason for the discrepancy with Districts 1, 3 4 and 7 where there are more areas of low-income, poverty, etc., and this being a core service of the city and the importance of pro-active outreach, with Mr. Oldham responding. Councilmember Quintero also commended Mr. Oldham stating his division has done a great job, and upon his questions Mr. Oldham stated the program was targeted for owner-occupied residences and expanded further, his staff has walked blocks all over the city, and testing could take three to four hours or longer as it was quite extensive. President Olivier thanked Mr. Oldham for his hard work and PG&E and everyone else who came to speak today. There was no further discussion.

RECESS – 5:33 P.M. – 5:58 P.M. Councilmember Quintero was absent for the remainder of the meeting.

SCHEDULED COMMUNICATION:

#1 APPEARANCE BY J.D. McCUBBIN TO DISCUSS THE HOMELESS

Not present.

#3 APPEARANCE BY CHRIS KOCH TO DISCUSS GLOBAL ALLIANCE

Appearance made with Mr. Koch submitting written material explaining what Global Alliance is and requesting to meet with council members individually.

The City Council recessed at 6:02 p.m. and convened in joint session with the Redevelopment Agency.

(1:30 P.M. #1) JOINT MEETING WITH THE REDEVELOPMENT AGENCY

APPROVE AGENCY MINUTES OF JANUARY 5 AND 12, 2012

On motion of Vice Chair Westerlund, seconded by Member Olivier, duly carried, **RESOLVED**, the Agency minutes of January 5 and 12, 2012, approved as submitted.

(‘A’) AGENCY RESOLUTION NO. 1796 – APPROVING THE REPLACEMENT HOUSING PLAN FOR FIVE (5) SITES WHICH INCLUDE 1733 AND 1737 E. BELMONT AVENUE, 161 N. CLARK STREET, 329 N. COLLEGE AVENUE, 864 KLETTE AVENUE, AND 3745 E. EL MONTE WAY, LOCATED WITHIN AND ADJACENT TO REDEVELOPMENT PROJECT AREAS

Project Consultant Freeman advised of a correction to the staff report stating the 329 N. College site had not yet been cleared and abatement procedures would start in two to three weeks with demolition following, and reviewed the issue as contained in the staff report as submitted.

On motion of Vice Chair Westerlund, seconded by Member Olivier, duly carried, RESOLVED, the above entitled Resolution No. 1796 hereby adopted, by the following vote:

Ayes : Borgeas, Brand, Olivier, Westerlund, Xiong, Baines
Noes : None
Absent : Quintero

(‘B’) AGENCY APPROVAL OF AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH CALIFORNIA ASSOCIATES, INC., FOR CONSTRUCTION MANAGEMENT AND CONSTRUCTION STAKING SERVICES NECESSARY FOR THE RELOCATION OF HISTORIC STRUCTURES TO 450 “M” STREET AND EXTERIOR RESTORATION OF STRUCTURES, AND AUTHORIZE THE EXECUTIVE DIRECTOR TO EXECUTE THE AGREEMENT

Project Manager Cox reviewed the issue as contained in the staff report as submitted.

On motion of Vice Chair Westerlund, seconded by Member Brand, duly carried, RESOLVED, an amendment to the Professional Services Agreement with California Associates, Inc., for construction management and construction staking services necessary for the relocation of historic structures to 450 “M” Street and exterior restoration of structures hereby approved, and the Executive Director authorized to execute the Agreement, by the following vote:

Ayes : Borgeas, Brand, Olivier, Westerlund, Xiong, Baines
Noes : None
Absent : Quintero

(‘D’) AGENCY APPROVAL OF THE FIRST AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) BETWEEN THE RDA AND EDISON PLAZA PARTNERS, LP, FOR A MIXED INCOME/MULTI-FAMILY HOUSING PROJECT ON PROPERTY LOCATED SOUTH OF LORENA STREET, WEST OF WALNUT STREET, SUBJECT TO CITY ATTORNEY APPROVAL AS TO FORM

Project Manager Cox reviewed the issue as contained in the staff report as submitted. Vice Chair Westerlund added the reduction of housing units from 200 to 128 was due to an engineering mistake and the widening and alignment of Walnut Avenue, this was the last meeting of the Redevelopment Agency but the law allowed for this type of amendment which would be overseen by the Oversight Committee when it comes into existence, and this was not a give-away, and none of the projects were giveaways, as much needed affordable housing units were being purchased, elaborating throughout. City Attorney Sanchez clarified the concept here was one of legal reformation to correct the mistake of fact upon which the development was proceeding under; Ms. Cox added (1) the per unit price in the first contract was identical to this one, and (2) currently the land was worth \$655K and after this project it would be worth closer to \$27 million value; and Vice Chair Westerlund added there would be no windfall gained for reforming this contract as the Agency was not expending any more per housing unit.

On motion of Vice Chair Westerlund, seconded by Chair Baines, duly carried, RESOLVED, the first amendment to the Disposition and Development Agreement (DDA) between the RDA and Edison Plaza Partners, LP, for a mixed income/multi-family housing project on property located south of Lorena Street, west of Walnut Street, hereby approved, by the following vote:

Ayes : Borgeas, Brand, Olivier, Westerlund, Xiong, Baines
Noes : None
Absent : Quintero

(‘E’) AGENCY RESOLUTION NO. 1797 – ADOPTING AN AMENDED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE (EOPS) PURSUANT TO THE CALIFORNIA HEALTH & SAFETY CODE

Executive Director Murphey reviewed the issue, all as contained in the staff report as submitted, and upon question of Chair Baines stated everything being recommended as an enforceable obligation met the legal test and the list was compiled with the guidance of the California Redevelopment Association and the California League of Cities Department of Finance. Vice Chair Westerlund added the potential city debt was also part of this, the figures/dollar amounts were placed in the schedule based upon the current litigation being pursued through the courts with the city of Cerritos, and presented questions and comments relative to the litigation and how the Agency has operated, with City Attorney Sanchez, Deputy City Attorney Sloan and Ms. Murphey responding

and clarifying issues (**9 – 0**). Chair Baines added if the city of Cerritos case is not successful the numbers would be removed from the EOPS.

On motion of Chair Baines, seconded by Vice Chair Westerlund, duly carried, RESOLVED, the above entitled Resolution No. 1797 hereby adopted, by the following vote:

Ayes	:	Borgeas, Brand, Olivier, Westerlund, Xiong, Baines
Noes	:	None
Absent	:	Quintero

(‘F’) COUNCIL RESOLUTION NO. 2012-12 - (1) ELECTING TO HAVE THE CITY SERVE AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY; (2) ELECTING TO RETAIN THE HOUSING ASSETS AND HOUSING FUNCTIONS PREVIOUSLY PERFORMED BY THE RDA; (3) PROVIDING FOR THE ORDERLY TRANSITION OF EMPLOYEES OF THE RDA; AND (4) APPROVING A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE FRESNO REVITALIZATION CORPORATION

Chair Baines commented on the background and gave an overview of the issue as contained in the staff report as submitted,

Councilmember Borgeas stated this was the last action of the Redevelopment Agency, the RDA was a 60 year old institution and its last day was next Tuesday, and commended Director Murphey and her staff for doing the lion’s share of the agency’s work and good things for the community stating they should all be proud. Chair Baines spoke to the transition of employees to the Successor Agency and clarified if the procedure being recommended this date is approved there would be no impact to any of the city bargaining units and explained. Councilmember Westerlund added what was before Council was the best recommendation, the most sincere efforts of city and RDA staff went into it, and spoke to the number of structures that were looked at; spoke to and expressed concern with a recent Fresno Bee article reporting “a \$5 million gift to a developer” and stated that was not true, the money was not, and never has been, a gift, but was to purchase an asset of affordable housing in downtown and the dollars were leveraged with private investment from a private developer; spoke to the great work of the Assemi family and stated he was very proud of the work done as the RDA adding there was still a lot of work to do; and stated he was honored to serve as the Agency Chair and commended Ms. Murphey and staff for all their work stating they will be proud in the future, and also commended Chair Baines for his understanding of the RDA in his short time on the Council and as Agency Chair.

On motion of Councilmember Baines, seconded by Councilmember Westerlund, duly carried, RESOLVED, the above entitled Resolution No. 2012-12 hereby adopted, by the following vote:

Ayes	:	Borgeas, Brand, Olivier, Westerlund, Xiong, Baines
Noes	:	None
Absent	:	Quintero

The joint bodies adjourned their meeting at 6:50 p.m. and the City Council reconvened in regular session.

(1:30 P.M. #2) SPECIAL JOINT MEETING OF THE FRESNO REVITALIZATION CORPORATION (FRC), THE CITY OF FRESNO, AND THE CITY OF FRESNO AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY

The City Council recessed at 6:50 p.m. and as the Successor Agency to the Redevelopment Agency convened in joint session with the Fresno Revitalization Corporation.

With consensus of the joint bodies Councilmember Baines chaired the meeting.

(‘A’) COUNCIL RESOLUTION NO. 2012-13 – A RESOLUTION OF THE CITY COUNCIL AND MAYOR ACCEPTING EX-OFFICIO DESIGNATION AS BOARD OF DIRECTORS OF THE FRESNO REVITALIZATION CORPORATION (FRC)

City Attorney Sanchez introduced the item as presented.

Fresno Bee reporter George Hostetter stated things were unclear to him and questioned how this was going to work, if it was legal for the City as the Successor Agency to report to the Oversight Board, and the issue of sovereignty, with Acting Chair Baines and Mr. Sanchez responding and Mr. Sanchez inviting Mr. Hostetter to visit his office tomorrow so he could walk him through it.

On motion of Councilmember Westerlund, seconded by Councilmember Baines, duly carried, RESOLVED, the above entitled Resolution No. 2012-13 hereby adopted, by the following vote:

Ayes : Borgeas, Brand, Olivier, Westerlund, Xiong, Baines
Noes : None
Absent : Quintero

(‘B’) FRC RESOLUTION NO. 1 – APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF FRESNO, AND THE CITY OF FRESNO AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY

City Attorney Sanchez introduced the item stating this action by the Fresno Revitalization Corporation board was the second step to earlier Council action on Agency Item ‘F’ wherein Council approved the MOU with the FRC.

On motion of Member Westerlund, seconded by Member Brand, duly carried, RESOLVED the above entitled FRC Resolution No. 1 hereby adopted, by the following vote:

Ayes : Borgeas, Brand, Olivier, Westerlund, Xiong, Baines
Noes : None
Absent : Quintero, Swearengin

The joint bodies adjourned their meeting at 7:00 p.m. and the City Council reconvened in regular session.

UNSCHEDULED ORAL COMMUNICATIONS:

Upon call, no one wished to be heard.

ADJOURNMENT

There being no further business to bring before the City Council, the hour of 7:00 p.m. having arrived and hearing no objection, President Olivier declared the meeting adjourned.

Approved on the ____2nd____ day of ____February____, 2012.

_____/s/_____
Clinton Olivier, Council President

ATTEST:_____/s/_____
Yolanda Salazar, Assistant City Clerk